IN THE HIGH COURT OF JUDICIATURE FOR RAJASTHAN AT JODHPUR

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**O R D E R**

S.B.Criminal Revision Petition No. 240/2000

(Smt. Shyama Devi Vs. Ajeet Singh)

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Date of order : 05.07.2006

**P R E S E N T**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr. U.S.Gehlot for the petitioner.

Mr. Surendra Surana for the non-petitioner.

BY THE COURT

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioner has challenged the order dated 27.04.2000 passed by judge, Family Court, Jodhpur (for short 'the family court' hereinafter) in Criminal Case No. 44/92 on an application filed by the petitioner under Section 125 Cr.P.C., whereby the family court dismissed the application filed by the petitioner seeking maintenance. Aggrieved by the order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also record of the family court.

It is submitted by learned counsel for the petitioner that in the year 2005, the petitioner has remarried and therefore, from the date of application i.e. 21.5.1992 till the petitioner remarried, the petitioner is entitled for the maintenance.

Learned counsel appearing for the non-petitioner submits that before the family court, the case of the petitioner was that non-petitioner contacted second marriage with one Hemlata which the petitioner failed to establish and therefore, the petitioner without any reasonable and probable cause deserted the non-petitioner husband at her own and as such she is not entitled for maintenance.

I have considered the rival submissions made by the counsel for the parties.

In the application u/s 125 Cr.P.C., the petitioner claimed the maintenance on the ground that she received an information on 17.5.1992 that non-petitioner contacted a second marriage on 14.5.1992 with Hemlata and therefore, she went to her parent's house and started living there. Though it was also stated that she was subjected to cruelty in connection with demand of dowry, for which a case was registered against the

non-petitioner. Learned counsel for the petitioner submits that the case lodged by the petitioner against the non-petitioner for cruelty and harassment has ultimately resulted in acquittal.

Before the family court, the petitioner herself appeared and produced one Kailash in evidence. In her statement, the petitioner stated that the non-petitioner contacted a second marriage with Hemlata in the year 1992. When she went to in-laws house, she found Hemlata there. Father of the non-petitioner stated that he got his son married again. Witness Kailash stated that non-petitioner contacted second marriage on 14.5.1992 with Hemlata daughter of one Om Prakash. In whole of his statement, he has not stated that he has witnessed the second marriage of non-petitioner with Hemlata. He also stated that the marriage was solemnized outside the Jodhpur. He has not disclosed the place of the alleged second marriage by the non-petitioner with Hemlata. He only stated that when they came back, then only he came to know that non-petitioner contacted a second marriage. The evidence of both these witnesses do not establish the second marriage of the non-petitioner during the subsistence of marriage with the petitioner. The non-petitioner himself appeared and produced Khemsingh Mali and mahesh Kumar Mali as witnesses and denied the allegation of second marriage. Witness Khemsingh also denied the fact of second marriage and

stated that after the marriage of the petitioner, she came to her in-laws house 2-4 times and thereafter she did not return and had started living with her parents. Similar is the statement of Mahesh Kumar.

On sound and proper appreciation of the evidence produced by the parties, the family court came to the conclusion that the petitioner has failed to establish the second marriage alleged to have been contacted by the non-petitioner and therefore, the petitioner herself deserted the non-petitioner without there being any reasonable and probable cause and as such she is not entitled for maintenance. On close scrutiny of the statements of witnesses, in my view, the conclusion arrived at by the family court cannot be said to be erroneous.

In the circumstances, therefore, I do not find any error, illegality or perversity in the order impugned warranting interference in the revisional jurisdiction.

The revision petition is accordingly dismissed.

(H.R.PANWAR), J.

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